

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re: HENRY L. WILTON

Case No. 10-36398-KRH

Debtor

Chapter 11

E. CARLTON WILTON,

Movant,

v.

HENRY L. WILTON,

Respondent

STIPULATION OF FACT

Comes now E. Carlton Wilton (“Wilton”), Wells Fargo Bank, as successor in interest to Wachovia Bank and The Bank of Hampton Roads, by counsel, and as and for a Stipulation of Fact for purposes of Wilton’s Motion for Relief from the Automatic Stay of 11 U.S.C. § 362 (a) (the “Motion”), state as follows:

Jurisdiction

1. Henry L. Wilton (the “Debtor”) commenced this case on September 16, 2010, by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, bearing the case Number 10-36398-KRH. Wilton is the father of the Debtor.

2. The Motion before the Court is filed pursuant to § 362 (d) of the Bankruptcy Code, Bankruptcy Rules 4001 (a) and 9014, and Local Bankruptcy Rule 4001 (a)-1, seeking relief from the automatic stay of § 362 (a) of the Bankruptcy Code.

3. This court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

The Debt and the Collateral

4. Debtor was a maker of a \$500,000.00 promissory note originally made payable to Ruffin and Payne, Inc. (“Ruffin and Payne”) dated August 28, 2007.

5. On February 8, 2008, Debtor executed an AMENDED AND RESTATED PROMISSORY NOTE (With Security Agreement) with Ruffin and Payne (the “Note”), a copy of which is attached hereto as **Exhibit A** which amended the note dated August 28, 2007.

6. The Note had an initial principal balance of \$750,000.00 and allowed for additional principal advancements up to a maximum balance of \$2,000,000.00. The Note provided that interest be paid to the Payee at 8.25 % per annum.

7. As security for the repayment of the Note and pursuant to paragraph 7 of the Note, language was included in the Note which ostensibly granted a security interest in 942.89 shares of Class A Common Nonvoting Membership Shares of the Wilton Companies, Inc., represented by Certificate No. 26D (attached hereto as **Exhibit B**), 523 shares of Class A Common Nonvoting Membership Shares of the Wilton Companies, Inc. (sic), represented by Certificate No. 54 B (attached hereto as **Exhibit C**), and 636.02 shares of Class A Voting Membership Shares of The Wilton Companies, Inc. (sic), represented by Certificate No. 57 (attached hereto as **Exhibit D**), collectively, (the “Collateral”). In addition, the Debtor delivered physical possession of these three Certificates and three signed Irrevocable Stock

Powers in blank to Ruffin and Payne. Copies of these Stock Powers are attached as **Exhibit G**. The certificates which comprise the Collateral are closely held and are not dealt in or traded on securities exchanges or in securities markets.

8. Paragraph 7 of the Note incorrectly described Certificate No. 57 as “Class A Common Non-Voting Stock of The Wilton Companies, Inc.” when, in fact, Certificate No. 57 represents shares of Class A Common Voting Memberships Shares of The Wilton Companies, LLC as shown on the face of Certificate Number 57 (**Exhibit D**). Paragraph 7 of the Note also incorrectly describes Certificate Number 54B as shares of “Class A Common Non-Voting Stock of The Wilton Companies, Inc.” when, in fact, Certificate Number 54B represents shares of the Class A Non-Voting Membership Shares of The Wilton Companies, LLC as shown on the face of the Membership Interest Certificate (**Exhibit C**).

9. On March 9, 2009, the Debtor and Ruffin and Payne executed the FIRST ALLONGE AND AMENDMENT TO PROMISSORY NOTE (hereafter “Allonge Agreement”) to the Note, just prior to Wilton’s purchase of the Note on March 9, 2009. A true and accurate copy of the Allonge Agreement is attached hereto as **Exhibit F**.

10. The Allonge Agreement corrected the actual collateral pledged under the Note by amending Paragraph (a) of Section 7 of the Note to read:

(a) 942.89 shares of Class A Common Nonvoting Stock of The Wilton Companies, Inc., represented by Certificate No. 26D, 523.00 shares of Class A Common Nonvoting Membership Shares of The Wilton Companies, LLC, represented by Certificate No. 54B, and 636.0234 shares of Class A Common Voting Membership Shares of The Wilton Companies, LLC, represented by Certificate No. 57 (collectively, the “Shares”).

11. On March 9, 2009, Wilton bought the Note from Ruffin and Payne for \$1,782,123.15 and executed a NOTE SALE AND ASSIGNMENT AGREEMENT (hereafter “Assignment Agreement”) with Ruffin and Payne which is attached hereto as **Exhibit E**. At the time of this closing, Ruffin and Payne delivered physical possession of the three Certificates referenced in the Allonge (Exhibits B,C and D) and the three signed Irrevocable Stock Powers in blank (Exhibit G) to Wilton.

12. Wilton filed a UCC-1 financing statement with the Virginia State Corporation Commission on April 2, 2010 (the “Financing Statement”). A copy of the Financing Statement is attached hereto as **Exhibit H**. The Financing Statement incorrectly described Certificate No. 57 as “Certificate No. 139”, incorrectly described the owner of this Certificate as “Wilton Family Investments, LLC”, not Henry L. Wilton and incorrectly described this Certificate as being “Nonvoting” instead of voting. The Financing Statement also incorrectly described Certificate Number 26D as “membership shares of The Wilton Companies, LLC” instead of common stock shares of The Wilton Companies, Inc.

13. Wilton was in default under the Note before Debtor filed his bankruptcy petition on September 16, 2010.

14. The pre-petition balance of the Note as listed on Schedule D of Debtor’s bankruptcy petition is \$ 1,750,000.00. However, the actual balance on the Note is \$2,046,994.14, with accrued interest at 8.25% as allowed in paragraph 3 of the Note and 5% late charges as allowed in paragraph 4 of the Note all of which is due and payable in addition to attorney’s fees and costs as allowed by the Note.

15. Interest is accruing on the Note at \$14,073.08 /month.

16. The pre-petition value of the Collateral asserted by the Debtor on Schedule D of his bankruptcy petition is \$879,534.00.

17. Wilton has incurred and will continue to incur attorney's fees and legal costs arising as a result of this bankruptcy filing. Wilton is entitled to add those attorney's fees and costs to his claim under the Note.

18. From the time of the closing of the Note Sale and Assignment referenced herein and to the current time, Wilton or his attorney has retained possession of the original endorsed Certificate Numbers 26D, 54B and 57 and applicable stock powers signed in blank.

E. CARLTON WILTON

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